

No. 87-1633

Supreme Court, U.S.

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In The  
**Supreme Court of the United States**  
October Term, 1987

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SIKORSKY AIRCRAFT DIVISION,  
UNITED TECHNOLOGIES CORPORATION,

*Petitioner,*

vs.

THERESA KLOSS, LORI K. UTSINGER,  
individually and as Guardian ad Litem for  
JOHN FRANCIS UTSINGER, a Minor, and  
AIMEE MAY UTSINGER

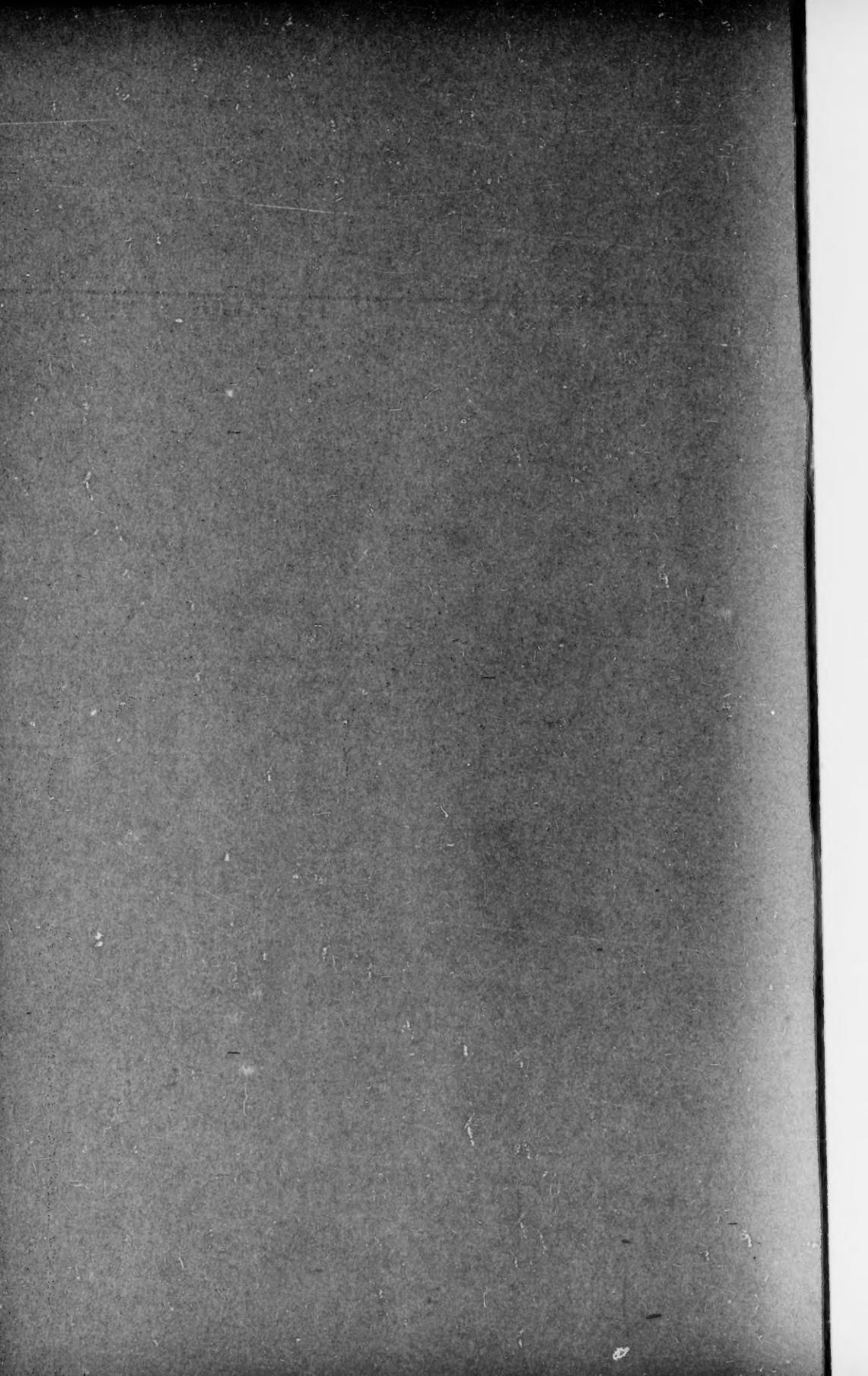
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**RESPONDENTS' BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether a California state court may exercise concurrent jurisdiction over a wrongful death claim arising on the high seas, when no reported decision of a California Appellate Court had ever addressed the issue prior to the enactment of the Death on the High Seas Act.
2. Whether Congress or this Court intended that concurrent jurisdiction over high seas death claims would be limited to those few states in which appellate courts had already considered and permitted jurisdiction prior to DOHSA.

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TO THE HONORABLE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES:

THERESA KLOSS, LORI K. UTSINGER, individually and as Guardian ad Litem for JOHN FRANCIS

UTSINGER, a Minor, and AIMEE MAY UTSINGER, the Respondents herein, pray that the Petition of SIKORSKY AIRCRAFT DIVISION, UNITED TECHNOLOGIES CORPORATION, for Writ of Certiorari filed in this Court on March 14, 1988 be denied.

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### **STATEMENT OF THE CASE**

This action for wrongful death concerns the crash of a United States Marine Corps helicopter which occurred on June 1, 1984 near San Clemente Island off the coast of California. The plaintiffs are the heirs of two United States Marines, both of whom were California residents stationed in Tustin, California, who were killed when their Sikorsky CH-53E Super Stallion helicopter plunged into the Pacific Ocean while carrying a truck from the deck of the U.S.S. Denver to the island.

Subsequent investigation revealed that the crash was caused by design defects in helicopters of this type which have been plagued by a history of numerous mishaps over the past several years, resulting in several fatal crashes. The plaintiffs have brought a products liability action against Petitioner, the manufacturer of the helicopter, and other defendants.

The action was commenced on May 31, 1985 in the Superior Court of the State of California for the County of Orange. On July 1, 1987, following the running of the three-year statute of limitations under DOHSA, Petitioner brought a motion to dismiss the action, contending that California courts have no jurisdiction over wrongful death

claims arising on the high seas. Following the denial of the motion on July 7, 1987, petitioner filed a Petition for Writ of Prohibition with the Court of Appeal of the State of California, Fourth Appellate District on September 11, 1987. The petition was untimely, as it was filed well beyond the 60-day time limit specified under California law. (*Kruger v. Superior Court* (1979) 89 Cal.App. 3d 934, 152 Cal.Rptr. 870; *Reynolds v. Superior Court* 64 Cal. 372, 28 P. 121)

The petition was denied on September 18, 1987. Subsequently, on October 9, 1987, Petitioner filed a Petition for Review in the California Supreme Court, which was also untimely, having been filed beyond the 10 day time limit prescribed by rule 28(b) of the California Rules of Court. (Appendix A-1) The petition was transferred back to the Court of Appeal where it was denied on November 5, 1987. Another Petition for Review to the California Supreme Court on the same issue was denied on December 16, 1987.

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### **REASONS FOR DENYING THE WRIT**

The California courts have correctly chosen to exercise jurisdiction over this action pursuant to this Court's recognition of concurrent jurisdiction in the case of *Offshore Logistics v. Tallentire* (1987) 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d. Neither Congress nor this Court ever intended that concurrent jurisdiction over death claims arising on the high seas would be restricted to those few states in which courts had already addressed the issue of

jurisdiction, and denied to the numerous states wherein no reported decisions discussed the issue prior to the enactment of DOHSA.

Rather, the intent of section 7 of DOHSA was to preserve concurrent jurisdiction to all state courts which are empowered under their laws to exercise jurisdiction, as the California courts have done here. Exercise of jurisdiction by California courts will not in any way conflict with federal law, nor impede use of federal land and waters. Recognition of concurrent jurisdiction will only promote the goals enunciated by this Court in the *Tallentire* decision, which include effective and just administration of remedies, and preventing disunity in the provision of forums to survivors of those killed on the high seas.

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## ARGUMENT

**1. A STATE COURT HAS CONCURRENT JURISDICTION OVER CLAIMS INVOLVING DEATHS ON THE HIGH SEAS, IRRESPECTIVE OF WHETHER THAT STATE HAD EXERCISED SUCH JURISDICTION PRIOR TO THE ENACTMENT OF DOHSA**

Petitioner contends that this Court's holding in *Offshore Logistics v. Tallentire*, 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d (1987), recognizes concurrent jurisdiction of state courts over claims involving deaths on the high seas, but only in those states which had exercised such jurisdiction prior to the enactment of the Death on the High Seas Act. (46 U.S.C. 761 et seq.) Seizing upon a single line from the *Tallentire* opinion, Petitioner argues that the

decision must be clarified as limiting concurrent jurisdiction to those few states.

However, a more careful reading of the *Tallentire* decision (106 S.Ct. at 2496-7) and the cited portions of the congressional record (51 Cong.Rec. 1928 (1914), 59 Cong. Rec. 4482-5 (1920)), makes it unequivocally clear that no such limitation was ever intended by Representative Mann nor by the Court. *Nowhere* is there an expression of any attempt to limit jurisdiction to the few states courts which *had* exercised jurisdiction. On the contrary, the concern was to preserve the jurisdiction of any state court which *could* exercise jurisdiction:

(477 U.S. at —; 106 S.Ct. at 2497)

“‘I was under the impression that the bill was not intended to take away any jurisdiction which *can* now be exercised by any state court’); *Ibid.* (‘If this act as originally drawn by the admiralty lawyers was intended for the purpose of taking away jurisdiction *now conferred* by state statutes, it ought to be critically examined’). By suggesting deletion of the language limiting the jurisdictional saving clause’s scope only to territorial waters, Representative Mann intended to ensure that state courts could also serve as a forum for the adjudication of wrongful death actions arising out of accidents on the high seas. See, e.g., *Ibid.* (Under Rep. Mann’s amendment, where a state *gives* a cause of action and a death occurred on the high seas ‘there would be concurrent jurisdiction’); *Id.*, at 4485 (If section 7 were amended as he suggested ‘the Act will not take away any jurisdiction conferred now by the states’).” (Emphasis added.)

Certainly section 7 was not intended, as Petitioner contends, to act like some sort of grandfather clause,

granting jurisdiction to those states which had fortuitously already considered the question, while denying jurisdiction to the much greater number of states in which the issue had never been raised in a published appellate decision. More importantly, such an interpretation would defeat the sound and compelling rationale for permitting concurrent jurisdiction, which was advanced by this court in the *Tallentire* decision:

(477 U.S. at —; 106 S.Ct. at 2500)

"Viewed in this light, section 7 serves not to destroy the uniformity of wrongful death remedies on the high seas but to facilitate the effective and just administration of those remedies. The recognition of concurrent state jurisdiction to hear DOHSA actions makes available to DOHSA beneficiaries a convenient forum for the decision of their wrongful death claims. (Citation) Because the resolution of DOHSA claims does not normally require the expertise that admiralty courts bring to bear, DOHSA actions are clearly within the competence of state courts to adjudicate. (Citation) Also, the availability of concurrent jurisdiction prevents disunity in the provision of forums to survivors of those killed on the high seas; it ensures that if a seaman and a passenger are killed at sea in the same accident, the beneficiaries of both are able to choose the forum in which they prefer to proceed. (Citations)

Petitioner's artificial limitation would prevent uniform application of these principles, and would indiscriminately deny the courts of numerous states jurisdiction over claims which they would otherwise assert. It would also require the already overburdened federal district courts to hear actions which state courts are equally competent to adjudicate.

Petitioner's contention that the recognition by this court of concurrent jurisdiction will be seen by the state

courts as a mandate that they must exercise jurisdiction, is completely unfounded. Nothing in the *Tallentire* decision requires a state court to do anything its law will not permit. It seems much more realistic that the state courts will perceive the exercise of jurisdiction not as a requirement, but as a prerogative which they may have previously denied themselves due to a pre-*Tallentire* misperception that the jurisdiction of the federal courts was exclusive.

**2. CALIFORNIA LAW DOES NOT PROHIBIT THE EXERCISE OF JURISDICTION OVER CLAIMS OF ITS CITIZENS ARISING ON THE HIGH SEAS, AND CALIFORNIA COURTS HAVE CONSISTENTLY ASSUMED JURISDICTION OVER CLAIMS INVOLVING EXTRATERRITORIAL INJURIES**

Relying on the absence of any pre-DOHSA California decision which addresses this specific issue, Petitioner argues that California's wrongful death statute "has never conferred jurisdiction" over actions for deaths occurring on the high seas, and that the California courts have historically declined to exercise extraterritorial wrongful death jurisdiction. Implicit in petitioner's argument is that given the choice, modern California courts would choose not to exercise jurisdiction here, as they have already done.

Aside from this basic flaw, and the fact that California Code of Civil Procedure section 377 does not in any way purport to geographically limit its application, an analysis of California law, including the cases cited by Petitioner, demonstrates that California courts can and do exercise jurisdiction over extraterritorial claims arising from injury to and death of California residents.

In the case of *Taylor v. Steamer Columbia* (1885) 5 Cal. 268, the California Supreme Court recognized that a California court could entertain jurisdiction, wherever the cause of action may have arisen, "whether on land or water, on the high seas, in harbor, within the ebb and flow of the tide, or on dry land." (5 Cal. at 271) The court in *North Pacific Steamship Company v. Industrial Accident Commission* (1917) 174 Cal. 346, in fact chose to exercise jurisdiction over an action involving an injury on the high seas.

In *Ryan v. North Alaska Salmon Company* (1908) 153 Cal. 438, the court held only that the plaintiffs complaint was improperly plead, but it did not hold that a California court could not hear the claim. On the contrary, the court concluded that where an action such as the claim before it was transitory in nature, it could be asserted and enforced in the State of California.

In *Grant v. McAuliffe* (1953) 41 Cal.2d 859, an action for personal injuries against the estate of the decedent, the court held that even though the motor vehicle accident which was the subject of the action occurred in Arizona, the three California residents could prosecute their action in California under California law. (41 Cal.2d at 867)

Finally, the only case addressing DOHSA, the 1960 California appellate court decision of *Gordon v. Reynolds* (1960) 187 Cal.App.2d 472, relied heavily on a misinterpretation of 46 U.S.C. 761 et seq. The court erroneously concluded, as did pre-*Tallentire* decisions in other states, that federal jurisdiction over deaths occurring on the high seas was exclusive. The bottom line is that no pre-DOHSA case from a California court ever held that a California court could *not* exercise jurisdiction over a death claim arising outside the state's borders.

Petitioner concedes that Louisiana state courts would have concurrent jurisdiction under *Tallentire*, but contends California courts would not. Petitioner has erroneously concluded that Louisiana had prior to 1920 applied its wrongful death statute to deaths occurring on the high seas. The *La Bourgogne* (1908) 210 U.S. 95, 52 L.Ed. 973, cited by Petitioner, had nothing to do with the law of Louisiana, but instead involved the issue of whether the law of France provided an action for wrongful death of a French citizen. (210 U.S. at 138)

Moreover, there is nothing special about the Louisiana wrongful death statute, referred to by the Fifth Circuit Court of Appeal in *Offshore Logistics, Inc. v. Tallentire* ((5th Cir. 1985) 754 F.2d 1274), which distinguishes it from the California statute. The statute itself, Louisiana Civil Code section 2315.2 (Appendix page A-2), makes no reference to its application outside the territory of Louisiana. The Fifth Circuit Court of Appeal pointed out:

(754 F.2d at 1286)

"Article 2315 provides no clue as to whether it is intended to apply to death occurring on the high seas. Louisiana decisional law construing Article 2315 also furnishes no concrete guidance concerning whether the provision should have extraterritorial application."

However, the Fifth Circuit court concluded that plaintiffs had a claim under Louisiana law for death on the high seas based upon the fact that Louisiana would apply its tort law to occurrences in other states:

(754 F.2d at 1286)

“It is significant, however, that Louisiana will apply its tort law to an event or transaction occurring in another state, if Louisiana has a sufficient interest in the transaction. (Citations) We also note that Louisiana applies its workman’s compensation law to employees meeting certain statutorily defined conditions, even if the injury occurs in another state, a foreign country, or on the outer continental shelf. (Citations) Workman’s compensation statutes and wrongful death statutes, broadly speaking, have the same purpose: To ensure that injured individuals or their survivors are compensated. There can be little doubt that Louisiana has a strong interest in seeing that the survivors of its citizens killed by the fault of another are adequately compensated. It is most reasonable, unless the Louisiana courts or legislature indicate a contrary intent, to assume that the state intended the protection of this law to extend to its constitutional limits.”

Not surprisingly, California decisional law regarding the exercise of jurisdiction over accidents arising outside of the state’s boundaries is identical to that of Louisiana. In *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 127 Cal.Rptr. 532, a California resident plaintiff brought a wrongful death action against a Nebraska resident, arising out of an accident which occurred in Nevada. The California Supreme Court held that the exercise of jurisdiction by a California court was proper, despite the fact that the accident occurred in another state.

Similarly, California applies its Workers’ Compensation law to cases involving injuries to California residents, even if the injuries arise outside the State’s territorial limits. California Labor Code section 5305 (Appendix A-3) provides, in pertinent part:

"The appeals board has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of the state at the time of the injury."

Moreover, the residency requirement of this Labor Code section has been held unconstitutional. Thus, it is unnecessary that the employee has been a resident of California at the time of his out-of-state injury, so long as he was hired within the State of California. (*Alaska Packers Association v. IAC*, 1 Cal.2d 250, 20 IAC 219, aff'd, 294 U.S. 532)

As can be seen, California courts have in fact historically chosen to exercise jurisdiction over claims of California residents arising outside the state, and have correctly chosen to do so in the case at bar.

### **3. EXERCISE OF JURISDICTION BY CALIFORNIA COURTS WILL NOT IMPEDE MILITARY AND NAVIGATIONAL USES OF SAN CLEMENTE ISLAND AND ITS SURROUNDING WATERS**

Petitioner argues that San Clemente Island and its surrounding waters are under the exclusive jurisdiction of the federal government, and that permitting California courts to impose jurisdiction and California law would seriously impede the military and navigational uses of the island and its surrounding waters. However, there is simply no factual basis for such an assumption, nor any logical reason to believe that exercise of jurisdiction by California state courts over death claims arising on the high seas would in any way interfere with the federal government's uses of San Clemente Island.

Moreover, California does in fact have an ownership interest in tide and submerged lands off the coast of San Clemente Island, where the subject helicopter came to rest. According to California Public Resources Code section 6871.2(a) (Appendix A-4), state-owned tide and submerged lands are located within:

“The tide and submerged lands surrounding the islands of San Clemente and Santa Catalina waterward of the ordinary high-water mark of the Pacific Ocean on such islands to a distance of three nautical miles.”

The State of California’s interest notwithstanding, this Court’s decision in *Tallentire* unequivocally held that state substantive law is not guaranteed, even though a state court chooses to exercise jurisdiction over a high seas death claim. (106 S.Ct. at 2500)

Finally, California courts have long recognized that even when exercising jurisdiction over a maritime cause of action, they must preserve all substantial admiralty rights of the litigants and may not apply conflicting state substantive law. (*Intagliata v. Ship Owners and Merchants Tow Boat Company, Ltd.* (1945) 26 Cal.2d 365,370, 169 P.2d 1; *Fahey v. Gledhill* (1983) 33 Cal.3d 884,887, 653 P.2d 197)

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## CONCLUSION

Neither the decision of this court in *Offshore Logistics v. Tallentire* nor the Congressional Record expressed any intent to restrict current jurisdiction over wrongful death claims arising on the high seas, to only those few

states in which appellate courts had had occasion to approve the exercise of such jurisdiction prior to the enactment of the Death on the High Seas Act. Such a limitation would defeat the purposes of section 7 of the Act as recognized by this court in *Tallentire*, promote disunity in the application of section 7, and unreasonably deny jurisdiction to courts of many states which would otherwise be competent and willing to adjudicate such claims.

The California courts have correctly chosen to assume jurisdiction here, based upon the imprimatur of this Court as well as the long-standing policy of exercising jurisdiction over actions of California residents for deaths and injuries occurring outside the State of California.

Accordingly, and for all the above reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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**APPENDIX A**

**California Rules of Court**

**Rule 28. Review by Supreme Court**

(b) [Time for filing] A party seeking review must serve and file a petition within ten days after the decision of the Court of Appeal becomes final as to that court, but a petition may not be filed as to the denial of a transfer to a Court of Appeal in a case where the original jurisdiction is within the original jurisdiction of a municipal or justice court.

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Louisiana Civil Code

C.C. Art 2315.3. Wrongful death action.

A. If a person dies due to the fault of another, suit may be brought by the following persons to recover damages which they sustained as a result of the death:

(1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children;

(2) The surviving father and mother of the deceased, or either of them, if he left no spouse or surviving child; and

(3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child or, parent surviving.

B. The right of action granted by this Article prescribes one year from the death of the deceased.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this article.

D. As used in this article, the words "child", "brother", "sister", "father", and "mother" include a child, brother, sister, father and mother, by adoption, respectively.

Added by Acts 1986, No. 211, section 2.

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**California Labor Code section 5305.**

The Appeals Board has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of the state at the time of the injury.

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**California Public Resources code section 6871.2  
Lands excluded from lease; application of section.**

Except as provided in section 6872 and 6872.1 of this Code, the commission shall not enter into any lease for the extraction of oil and gas from state-owned tide and submerged lands within the areas to which this section is applicable.

The provisions of this section shall be applicable only to the lands within the following described areas, but shall not be construed so as to prohibit operations or activities under any state oil and gas leases of any portion or portions of the tide and submerged lands to which this section is applicable and which leases are in effect on January 1, 1955, nor to prohibit renewals or extensions of any such leases in accordance with the provisions thereof.

(a) All those tide or submerged lands situated in the areas of the County of Los Angeles described as follows:

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Area No. 2: The tide and submerged lands surrounding the islands of San Clemente and Santa Catalina waterward of the ordinary high water mark of the Pacific Ocean on such islands to a distance of three nautical miles therefrom.

